

May 28, 2008

MEMORANDUM TO: James E. Lyons, Chairman
Committee to Review Generic Requirements

FROM: Charles L. Miller, Director **/RA George Pangburn for/**
Office of Federal and State Materials
and Environmental Management Programs

SUBJECT: REQUEST TO REVIEW BACKFIT APPEAL BY THE NUCLEAR
ENERGY INSTITUTE, DECOMMISSIONING PLANNING
PROPOSED RULE (RIN 3150-AH45)

SRM-SECY-07-0177 dated December 10, 2007, approved staff's recommendation to publish the Decommissioning Planning proposed rule for public comment (73 FR 3812 dated January 22, 2008). The proposed rule comment period ended May 8, 2008. The Office of Federal and State Materials and Environmental Management Programs (FSME) staff received several public comments on the proposed rule. In its comments, the Nuclear Energy Institute (NEI), stated that there was no compelling case for the rule and that it should not go forward. In particular, NEI questioned the validity of staff's adherence to backfit procedures and the backfit regulations in 10 CFR parts 50, 70 and 72, and requested the Nuclear Regulatory Commission (NRC) consider their comments on backfit issues as a backfit appeal, similar to the processes in NRC procedures for individual licensees' appeal of a proposed plant-specific backfit.

In the proposed rule, the NRC determined that the NRC's rules on backfitting do not require the preparation of a backfit analysis because the new or amended regulations in the proposed rule either clarify existing requirements, or require the collection and reporting of information using existing equipment and procedures.

The staff is requesting Committee to Review Generic Requirements (CRGR) review of the Backfit Analysis for the proposed rule, and the arguments presented by the NEI in their backfit appeal. The staff requests June 24, 2008, or soon thereafter, for the CRGR review. This will allow time to revise the final rule as necessary so that it may be issued by the FSME Division of Intergovernmental Liaison and Rulemaking for Office concurrence, by July 25, 2008. The final rule is due to the Executive Director for Operations by September 16, 2008.

CONTACT: Kevin O'Sullivan, FSME/DILR
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The Decommissioning Planning proposed rule *Federal Register* notice and Regulatory Analysis are attached for your information, with the NEI comments on the proposed rule. Comments supporting NEI's backfit arguments were received from 10 other organizations. Comments agreeing with NRC's determination that the proposed rule did not require preparation of a backfit analysis were received from six Environmental Advocacy groups, four Agreement States, and the Conference of Radiation Control Program Directors, Inc.

Enclosures:

1. Decommissioning Planning
Proposed Rule (73 FR 3812)
2. Regulatory Analysis for Proposed
Rulemaking – Decommissioning
Planning, Draft for Comment,
December 2007
3. Draft Guidance to Implement Survey
and Monitoring Requirements Pursuant
to Proposed rule Text in 10 CFR 20.1406(c)
and 10 CFR 20.1501(a)
4. NEI comments for Decommissioning
Planning Rulemaking and
Guidance Documents

The Decommissioning Planning proposed rule *Federal Register* notice and Regulatory Analysis are attached for your information, with the NEI comments on the proposed rule. Comments supporting NEI's backfit arguments were received from 10 other organizations. Comments agreeing with NRC's determination that the proposed rule did not require preparation of a backfit analysis were received from six Environmental Advocacy groups, four Agreement States, and the Conference of Radiation Control Program Directors, Inc.

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